IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.4381 OF 2005

Shri. Gangaram Vithoba Shendge & Anr. ...Applicants
Vs.
The State of Maharashtra ...Respondent

Shri. K.S. Patil for the Applicant.
Mr. R.Y. Mirza A.P.P. for the Respondent.

CORAM : A. S. OKA, J.
DATED : JULY 18, 2005.

P.C.:

1. Heard learned Advocate for the Applicant and the learned A.P.P. for the State. The offence alleged against the Applicant is under sections 354 and 376 of the Indian Penal Code read with Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1999.

2. The learned Counsel appearing for the Applicant has invited my attention to the F.I.R. lodged by the prosecutrix on 04th February, 2005 and to the subsequent statement of the prosecutrix dated 10th February, 2005. He pointed out that in the F.I.R. there is no alleagation regarding the commission of offence under section 376 of the Indian Penal Code and the said allegation is made only in the subsequent statement. He pointed out the injury certificate dated 04th February, 2005 of the prosecutrix as well as the injury certificate issued on 15th February, 2005. He submitted that in view of what is stated by the Applicant in the F.I.R. and in

the subsequent statement, it is obvious that a false case is made out by the Applicant. The learned A.P.P. opposed the Application and submitted that clear case of commission of offence under section 376 of the Indian Penal Code has been made out.

3. I have considered the submissions. The F.I.R. is filed on 4th April, 2005 of the incident which had taken place between 5.00 p.m. to 6.15 p.m.on the same day. The allegation made in the F.I.R. by the prosecutrix is that the Applicants attempted to outrage her modesty. Her specific case is that when she was being taken in a jeep by the Applicants under the pretext that her husband was sick, she jumped out of the jeep and she met a woman and two persons who took her to the Police Station. The injury certificate dated 4th February, 2005 records the history of road accident on the same day due to fall from a vehicle. The certificate records that the history is given by the Applicant. It is the supplementary statement of the Applicant recorded by the police that alleges that the Applicants have committed offence under section 376 of the Indian Penal Code. Apart from the drastic improvment in earlier case, there are factual contradictions in the F.I.R. and in the subsequent statement recorded on 10th February, 2005. All this creates a serious doubt about the involvement of the Applicants in the crime.

The investigation has been completed. The chargesheet has been filed. The Applicants were arrested on 5th February, 2005 and are thus in custody for last more than five months. A case is therefore made out for enlarging the Applicants on bail. Accordingly, the Application is allowed.

: O R D E R :

i) The Applicant shall be enlarged on bail in connection with C.R.No.05 of 2005 of Kokrud Police Station, subject to furnishing a personal bond of Rs.15,000/- each with two sureties in the like amount.

ii) The Bail is granted subject to condition that the Applicant shall not, directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with prosecution evidence.

iii) The Applicant shall co-operate with the learned Trial Judge for expeditious disposal of the trial. Any attempt by the Applicant to delay the trial may be a ground for cancellation of bail.

iv) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

v) Application is disposed of in above terms.

vii) The parties to act upon an authenticated copy of this order.

JUDGE